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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,218	08/21/2003	Jeanne Wilkinson	41872-287170	7218
7590	10/05/2005			EXAMINER MAI, TRI M
J. Michael Boggs Kilpatrick Stockton LLP 1001 West Fourth Street Winston-Salem, NC 27101-2400			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/645,218	WILKINSON ET AL.	
	Examiner Tri M. Mai	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1/15/04</u> <u>8/21/03</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6622858. This is a double patenting rejection.

3. Claims 2-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6622858. Although the conflicting claims are not identical, they are not patentably distinct from each other because It would have been obvious to one of ordinary skill in the art to eliminate the limitations when they are not desired.

4. Claim 7 is objected to. Please change the dependency of claim 7.

5. Claims 2-3, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tunis (4014436) in view of Cutler (646638). Tunis teaches a back panel, a hanging tab, a closing slot 13, a bottom support panel 24, and a front panel 17 with a tab 19.7. Tunis meets all claimed limitations except for the tab connecting to the bottom support panel. Cutler teaches that it is known in the art to provide tabs with a plurality of fold lines in a container. It would have been obvious to one of ordinary skill in the art to provide a tab with fold lines in Tunis as taught by Cutler to accommodate the contents.

Art Unit: 3727

Note that portion 22 is part of the garment as claimed. With respect to the folding support panel, the limitation does not impart any structure over the combination of Tunis in view of Cutler since the claim is directed to a package, and the combination of Tunis in view of Cutler meets the final condition of the package as claimed.

Regarding claim 4, note that there are at least two fold lines proximate each of the inner edge and the outer most edge.

Regarding claim 5, front panel is less than the length of the back panel as claimed, and the garment is exposed below the front panel for display.

6. Claims 2, 3, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oakley (6032793) in view of Tunis, and further in view of either Tuttle et al. (2755924) or Usui (5791470). Oakley teaches a garment display package with back panel 114, a hanging tab 122, a bottom support panel 112, and a front panel 132. Oakley meets all claimed limitations except for 1) the closing slot in the back panel for engaging with a tab on the front panel, and 2) the connecting tab on the bottom support. Tunis teaches that it is known in the art to provide an attachment with a slot 13 and a tab 19.7. It would have been obvious to one of ordinary skill in the art to provide a closing slot in the back panel for engaging with a tab on the front panel in Oakley as taught Tunis to provide an alternate attachment means.

With respect to the tab on the bottom support, either Tuttle or Usui teaches that it is known in the art to provide a tab (12, 30, respectively) with fold lines (13, 14; 16, 18 respectively). It would have been obvious to one of ordinary skill in the art to provide a tab with an additional fold line in Oakley as taught by either Tuttle or Usui to accommodate the size of the contents.

Art Unit: 3727

Regarding claim 32, note the plurality of fold lines to accommodate the contents in Tunis.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over either the Tunis or Oakley rejections in paragraphs 5 and 6, and further in view of Russell (4190151). The modified package of Oakley meets all claimed limitations except for the J-shape hanging tab. Russell teaches that it is known in the art to provide a J-shape hanging tab. It would have been obvious to one of ordinary skill in the art to provide a J-shape hanging tab in as taught by Russell to provide an alternate hanging device.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai  
Primary Examiner  
Art Unit 3727